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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/749,036

12/28/2000

Veronique Ferrari

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5474

22852

7590

07/16/2002

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EXAMINER

HOWARD, SHARON LEE

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 07/16/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/749,036

Applicant(s)

FERRARI ET AL.

Examiner

Sharon L. Howard

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims pending in the application are 92-230,235-242,245-248,250,251,253,256-259,262,263,266,267,269,273-275 and 279-287.

Continuation of Disposition of Claims: Claims rejected are 92-230,235-242,245-248,250,251,253,256-259,262,263,266,267,269,273-275 and 279-287.

Applicant's election with traverse of Group II, claims 92-230,235-242,245-248,250,251,253,256-259,262,263,266,267,269,273-275,279-287 in Paper No.6 is acknowledged.

***Claim Rejections - 35 USC § 112***

Claims 93,97,98,113,114,118,120,145,146,148,158,161,162,177,179,184,186, 189,190,193,200,202,207,210,211, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The words "chosen from" in the claims contain improper Markush language. Proper Markush language is "selected from the group consisting of".

In claim 214, it is suggested that applicant remove the acronym "PDMS".

In claim 225, the word "including" is indefinite, because it is not established that there is a specific requirement in the claim or that it is only exemplary.

In claims 279-281, there is insufficient antecedent basis for the limitation "The anhydrous composition".

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1615

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 92-99, 103, 106-136, 143-148, 158, 171, 177, 178, 179, 181, 182-195, 199-202, 204-212, 218-230-248 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavlin et al. (U.S. Patent No. 5,783,657).

Pavlin teaches a low molecular weight, ester-terminated polyamide resin which is combined with a low-polarity liquid hydrocarbon to form a transparent (gel) composition (see abstract and col.15, lines 12-15) which is a structuring polymer. Pavlin teaches that the polyamide has a softening point of 80 C to about 130 C (col.7, lines 32-35). Pavlin teaches an ester-terminated polyamide of the formula (1) and that the ester groups comprises about 10% to about 50% of the ester and amide groups (col.4, lines 1-67). Pavlin teaches a carbonyl group (col.6, lines 8-65) and a hydrocarbon having 10 to 30 carbon atoms (col.15, lines 23-25) consisting of mineral oil (col.15, lines 26-44), fatty acid esters (col.15, lines 59-67, col.16, lines 1-33) which comprises a pendant fatty chain with a polymer, having alkyl or alkenyl groups comprising at least four carbon atoms (col.5, lines 3-22). Pavlin discloses carboxylic acids (col.16, lines 23-29) and a method for applying the gel composition to the skin (col.14, lines 30-47). Pavlin teaches lipstick, makeup, skin moisturizers, hair care products, sun care products and deodorant/antiperspirant products which comprises the gel composition (col.14, lines 37-47). Pavlin also discloses using other ingredients which include colorants, hardeners, perfumes, strengtheners and wax (col.17, lines 24-29). Pavlin discloses gel hardness is judged qualitatively (col.17, lines 55-56).

With respect to the silent teaching of the hydrophilic/lipophilic balance value, the teaching is inherent, since the prior art teaches that the ester-terminated polyamide form gels with low polar (nonvolatile) liquid hydrocarbons at room temperature (col.13, lines 47-58 and col.15, lines 12-25).

Pavlin meets the limitations of the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 92-230,235-242,245-248,250,251,253,256-259,262,263,269,273-275,279-287 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavlin ('657).

Pavlin is discussed above.

Pavlin does not teach the particular ester.

However, there is no criticality seen over the prior art's teaching in the use of the particular ester, since Pavlin teaches a fatty acid with a polymer which is a pendant fatty chain.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Pavlin. One having ordinary skill in the art would have been motivated to prepare the composition of Pavlin which comprises a fatty acid with an ester-terminated polymer and a fatty phase.

The expected result would be a composition which comprises a structuring polymer and a fatty substance.

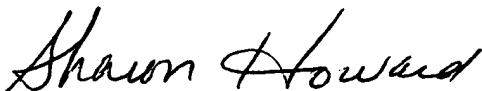
The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claims 264-267 are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3121 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Sharon Howard  
July 15, 2002



THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600